

## 1 UNITED STATES DISTRICT COURT

## 2 DISTRICT OF NEVADA

3 TYRONE NOEL NUNN,

Case No. 3:23-cv-00578-ART-CLB

4 Plaintiff,

5 v.

**ORDER**

6 DISTRICT OF NEVADA,

7 Defendant.

8

9 On November 17, 2023, this Court ordered *pro se* Plaintiff Tyrone Noel  
10 Nunn to submit a complaint and file a fully complete application to proceed *in*  
11 *forma pauperis* (“IFP application”) or pay the full \$402.00 filing fee on or before  
12 January 16, 2024. (ECF No. 3.) Plaintiff was warned the action could be  
13 dismissed if he failed to submit a complaint and file a fully complete IFP  
14 application with all three documents or pay the full \$402.00 filing fee for a civil  
15 action by that deadline. (*Id.* at 2-3.) When the deadline expired, Plaintiff had not  
16 submitted a complaint and had not filed a fully complete IFP application or paid  
17 the full \$402.00 filing fee.

18 Because Plaintiff submitted a motion for appointment of counsel, an  
19 incomplete IFP application, and a motion to consolidate (ECF Nos. 4, 5, 6), the  
20 Court considered meaningful alternatives to dismissal and issued another order  
21 on February 16, 2024, granting Plaintiff one final opportunity to submit a  
22 complaint and file a fully complete IFP application by the deadline of March 15,  
23 2024. (ECF No. 7.) The deadline has now expired and Plaintiff still has not  
24 submitted a complaint and has not filed a fully complete IFP application, paid  
25 the full \$402.00 filing fee, or otherwise responded.

26 District courts have the inherent power to control their dockets and “[i]n  
27 the exercise of that power, they may impose sanctions including, where  
28 appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los*

1       *Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based  
 2       on a party’s failure to obey a court order or comply with local rules. *See Carey v.*  
 3       *King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to  
 4       comply with local rule requiring *pro se* plaintiffs to keep court apprised of  
 5       address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987)  
 6       (dismissal for failure to comply with court order). In determining whether to  
 7       dismiss an action on one of these grounds, the Court must consider: (1) the  
 8       public’s interest in expeditious resolution of litigation; (2) the Court’s need to  
 9       manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy  
 10      favoring disposition of cases on their merits; and (5) the availability of less drastic  
 11      alternatives. *See In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217,  
 12      1226 (9th Cir. 2006) (quoting *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th  
 13      Cir. 1987)).

14           The first two factors, the public’s interest in expeditiously resolving this  
 15      litigation and the Court’s interest in managing its docket, weigh in favor of  
 16      dismissal of Plaintiff’s claims. The third factor, risk of prejudice to defendants,  
 17      also weighs in favor of dismissal because a presumption of injury arises from the  
 18      occurrence of unreasonable delay in filing a pleading ordered by the court or  
 19      prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir.  
 20      1976). The fourth factor—the public policy favoring disposition of cases on their  
 21      merits—is greatly outweighed by the factors favoring dismissal.

22           The fifth factor requires the Court to consider whether less drastic  
 23      alternatives can be used to correct the party’s failure that brought about the  
 24      Court’s need to consider dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983,  
 25      992 (9th Cir. 1999) (explaining that considering less drastic alternatives *before*  
 26      the party has disobeyed a court order does not satisfy this factor); *accord*  
 27      *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that  
 28      “the persuasive force of” earlier Ninth Circuit cases that “implicitly accepted

1 pursuit of less drastic alternatives prior to disobedience of the court's order as  
2 satisfying this element[,]” i.e., like the “initial granting of leave to amend coupled  
3 with the warning of dismissal for failure to comply[,]” have been “eroded” by  
4 *Yourish*). Courts “need not exhaust every sanction short of dismissal before  
5 finally dismissing a case, but must explore possible and meaningful  
6 alternatives.” *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986).  
7 Because this action cannot realistically proceed until and unless Plaintiff  
8 submits a complaint and either files a fully complete IFP application or pays the  
9 \$402.00 filing fee for a civil action, the only alternative is to enter a third order  
10 setting another deadline. But the reality of repeating two ignored orders is that  
11 it often only delays the inevitable and squanders the Court’s finite resources.  
12 The circumstances here do not indicate that this case will be an exception: there  
13 is no hint that Plaintiff needs additional time or evidence that he did not receive  
14 the Court’s order. Setting a third deadline is not a meaningful alternative given  
15 these circumstances. The fifth factor thus favors dismissal. Having thoroughly  
16 considered these dismissal factors, the Court finds that they weigh in favor of  
17 dismissal.

18 It is therefore ordered that this action is dismissed without prejudice based  
19 on Plaintiff’s failure to submit a complaint and file a fully complete IFP  
20 application or pay the full \$402.00 filing fee in compliance with this Court’s  
21 November 17, 2023, and February 16, 2024, orders.

22 It is further ordered that the Clerk of Court is directed to enter judgment  
23 accordingly and close this case. No other documents may be filed in this now-  
24 closed case. If Plaintiff wishes to pursue his claims, Plaintiff must file a complaint  
25 and satisfy the matter of the filing fee in a new case.

26 Dated this 2<sup>nd</sup> day of April 2024.

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28

ANNE R. TRAUM  
UNITED STATES DISTRICT JUDGE